

Meeting of the Implementation Team

NOAA Fisheries Offices, Portland, OR

June 10, 2004

1. Greetings and Introductions.

The June 10, 2004, meeting of the Implementation Team, held at the NOAA Fisheries offices in Portland, Oregon, was chaired by Jim Ruff and facilitated by Donna Silverberg. The following is a condensed summary (not a verbatim transcript) of the items discussed and decisions made at that meeting. Some of the documents and enclosures referenced in this summary may be too lengthy to attach; please call Kathy Ceballos at 503/230-5420 to obtain copies, or if you have any question about these notes.

Silverberg welcomed everyone to today's meeting, led a round of introductions and a review of today's agenda.

2. Updates.

A. In-Season Management (TMT). The Corps' Cathy Hlebechuk said the June final water supply forecast has improved in comparison to the May final. Grand Coulee is now 53 MAF, a 1% improvement over the May final, to 84% of normal, up from 52.2 MAF, 82% of normal. At Lower Granite, January-July, the new forecast is 21.1 MAF, 70% of normal. It's 15.4 MAF for the April-July period, 71% of normal. At The Dalles, the June final forecast is 85.1 MAF, 79% of normal. Libby's June final forecast declined from 4.98 MAF to 4.55 MAF, so it is now below the USFWS threshold for the sturgeon pulse. At Dworshak, the June final forecast increased from 3.1 MAF to 3.3 MAF, April-July, or 87% of normal.

Hlebechuk said Dworshak was at 1593.3 feet as of midnight last night; spill of 2 to 11 Kcfs began on May 27 at that project. This morning they discovered a problem with Unit 3, the largest generating unit at that project; they're trying to discover whether that is a short-term or a long-term repair project. Dworshak is currently releasing 14 Kcfs, with 10 Kcfs spill. Libby elevation is at 2436.2 feet as of midnight last night, 23 feet from full, releasing 14 Kcfs for the sturgeon pulse. The project will go to 15 Kcfs outflow this Sunday at 6 p.m. as part of the sturgeon operation

At yesterday's TMT meeting, said Hlebechuk, we discussed the fact that the USFWS BiOp for sturgeon doesn't specify whether to use the May final or the June final forecast in determining the sturgeon pulse. The Fish and Wildlife Service would like the sturgeon pulse to continue as scheduled, however, through June 28. And how will that impact refill? Ruff asked. TMT looked at six different modeling scenarios at yesterday's meeting, Hlebechuk said; under two of those scenarios, Libby would refill by the end of July; under the other four, it would fill to various elevations short of full, but would not completely refill. David Wills noted that FPAC will be discussing the Libby operational alternatives at its meeting next Tuesday; the TMT will then revisit this topic at a conference call on June 16. Hlebechuk noted that the State of Montana is less concerned with refilling Libby than they are about avoiding a double peak in Libby outflow. Silverberg said that, in her view, TMT will be able to resolve the question of what the post-sturgeon operation should be at Libby. The group devoted a few minutes of discussion to the specifics of the six scenarios modeled by the Corps for Libby summer operations.

Athearn added that a TMT subgroup met last week to discuss 2004 spill management at The Dalles and John Day Dams; in particular, the question of whether the full BiOp spill volumes were being delivered at those projects. Their most important recommendation was that the 40% and 60% spill volumes at those projects will, from now on, be treated as targets, rather than not-to-exceed maximums. Any shortfalls or overspills will be trued up within 24 hours. The subgroup also laid to rest the notion that BPA should be obligated to provide "make-up" spill to offset any shortfalls from earlier in the season, Athearn added. It was a very productive meeting, Wills observed.

B. Water Quality Team (WQT). No report.

C. System Configuration Team (SCT). No report.

D. Independent Scientific Advisory Board (ISAB). No report.

E. TMDL Update. No report.

3. Action Agencies' Summer Spill Proposal.

BPA's Suzanne Cooper noted that the action agencies' summer spill proposal was released on Tuesday, June 8; it will be discussed at a Regional Executives meeting this Monday. She provided a brief overview of what is new in this proposal, noting that it was a revision of the preliminary proposal released in March. Since that was released, she said, we have been working through and incorporating the many comments received; the net result is a proposal that has changed significantly from the March proposal. In particular, she said, we have re-done the impacts analysis and have reduced the length of the proposed program of spill reductions from three years to one year. The spill reductions themselves have been scaled back from 55% to 39% savings in generation, she added. We have also introduced a new offset measure in response to comments: additional flow augmentation water from the Snake River, said Cooper.

With respect to the specifics of the action agencies' proposal, Athearn said it now includes BiOp spill at Ice Harbor and John Day through August 21, with no spill at these projects from August 22-31. There would be no spill at Bonneville or The Dalles Dams during the month of August.

Cooper went through Table 2, which summarizes the estimated juvenile impacts and offsets for 2004; she noted that the analysis underlying these conclusions is available via the www.salmonrecovery.gov website. The "Brownlee offset" referenced is an agreement between Bonneville and Idaho Power that would allow 100 kaf of water to be released from Brownlee Reservoir over three weeks starting July 1. The bottom line is that it appears that we can fully offset the effects of the reduced spill to Snake River fall chinook through this program of offsets, Cooper said.

When would Brownlee refill occur? Dick Nason asked. We have made it clear that we expect no refill of that 100 kaf during the summer fish migration period, Cooper replied. And they have agreed to that? Heinith asked. The actual agreement focuses on July, Cooper replied; the concern is that this water would be over and above that which would normally be provided. Idaho Power has furnished us with three operating plans, dating back to April; those plans include keeping Brownlee full and passing inflow through the month of July, Cooper said. We will be seeking further clarification with Idaho Power, she said, because we recognize that this is a concern. Can the actual contract be made available to the public? Heinith asked. I'm checking on that, and will report back, Cooper replied.

Will the 100 kaf from Brownlee be delivered via a constant flow, or will they be released at a higher rate during the week and a lower rate on weekends, for example? Heinith asked. That's possible, Cooper replied – the provisions are not that specific. And the 100 kaf is above BiOp flows? Hamilton asked. It's above the flow that otherwise would have come out of Brownlee reservoir, Cooper replied. This operation is specific to 2004, which is a relatively low water year; as you're aware, if you look at the 50-year historic record, it's pretty rare that we're able to fully meet the Snake River's BiOp flow target during the summer period. And how does the 2004 operating plan for Brownlee compare to their operations in 2003 and 2002? Tony Nigro asked. We're not privy to their internal operating plans from previous years, so I can't really answer that question, Cooper replied. But did they draft the reservoir in 2002 and 2003? Nigro asked. They drafted it to varying degrees, each July, Ruff replied – in 2001, they drafted Brownlee even though it was a far worse water year than 2004 is shaping up to be. My concern is that, if this is 100 kaf over and above what would normally have been drafted, that's one thing, said Nigro. However, if they typically draft Brownlee during July, I'm curious why they would choose not to draft it in July this year so that Bonneville would have to pay for it – the question is, what is Bonneville actually buying? Athearn reviewed the data and noted that the average Brownlee draft during the month of July during 2001-2003 is 2-3 feet; 100 kaf represents seven feet of Brownlee storage. And again, according to the operational plans Idaho Power furnished, they were planning to keep the reservoir full and pass inflow this July, said Cooper; we are seeking further clarification on this issue. It sounds as though what Bonneville is buying is the certainty that this 100 kaf volume will be released, Nigro observed.

Tom Lorz noted that the SIMPAS runs underlying the action agencies' biological impacts analysis is not yet available via the www.salmonrecovery.gov website. That can be provided, as can the DART run-timing information that were used, Ruff replied. He provided a memo describing the methods and assumptions used to produce the biological impacts analysis, and said NOAA Fisheries will provide any additional information the other salmon managers would like to review.

The discussion then moved on to Tables 5 and 6 of the proposal, which summarized the range of impacts on juvenile non-listed fish and the offsets considered for non-listed natural and hatchery fish, respectively. Cooper noted that, while the suite of available offsets appear, in the aggregate, to offset the biological impacts of the proposed operation, on a stock-specific basis, this is not always the case. And how would the prioritization process work for the available offset funds? Heinith asked. Offsets that provide the greatest benefit to the stocks most affected by the proposed reduction in summer spill would receive priority for funding, Cooper replied; the action agencies are seeking comments and ideas about which offset actions should be designated as the highest priority. Heinith noted that, from CRITFC's perspective, the \$2 million proposed for offset measure funding seems wholly inadequate; he asked how that number was derived. Our original proposal included \$6 million over three years – that's where the number comes from, Cooper replied, adding that she hears CRITFC's concern.

Will NOAA be doing a re-analysis of the impacts using their methodology? Lorz asked. It's already been done – it's the last table in the memo, Ruff replied. Cooper added that the action agencies adopted NOAA Fisheries' analysis of the impacts of this operation on listed fish

Moving on to the financial impacts of this proposal, Cooper said that, based on projected 2004 flows and depending on the market energy price assumption, BPA estimates the total benefits of this proposed change at \$33 million to \$44 million. If we assume an offsets cost of \$13 million, that provides a net benefit to ratepayers of \$20 million to \$31 million, said Cooper. That translates into a 1-2% rate impact, she added.

You didn't mention the \$3.3 million for the Council Fish and Wildlife Program, said Palensky – what does that go for? It's not technically an offset measure, Cooper replied; in the March proposal, we proposed providing \$10 million to the Council if revenue was generated as a result of the implementation of this proposal. We would commit it in FY'04 and it would go for the Council's fish and wildlife program budget in FY'05, she explained. The \$3.3 million is to deal with the financial effects of the transition from different accounting and budget processes that were used in the past; it will allow \$3.3 million in projects not to be cut in 2005.

So Bonneville will be able to make its Treasury payment this year? Heinith asked. That's my understanding, Cooper replied. And where does BPA's reserve stand at this point? Heinith asked. Our expectation is that FY'04 will be a break-even year, rather than a loss year, as the last few years have been, Cooper replied. Does BPA receive Treasury credit for water that is spilled, and if so, will you not be losing some of those credits? The 4(h)10(c) credits are not for foregone revenues, Cooper replied; the impacts will be modest relative to where those credits

would otherwise have been. It could result in a modest reduction in the net revenue benefit range cited in the memo, Cooper said. And is it fair to say that NOAA and the Corps concur with the numbers in the analysis in the proposal? Hamilton asked. Is NOAA comfortable with the impacts and offsets laid out for listed and non-listed fish? Heinith asked. The short answer is yes, Ruff and Athearn replied.

Athearn said the action agencies are asking that any written comments on the draft summer spill proposal be submitted by Monday afternoon, June 14; the regional executives will be meeting on Monday with the state and tribal sovereigns to hear written comments on the proposal. The executives will then make a decision as soon as possible thereafter, perhaps as soon as the end of the week. The action agencies will develop a Record of Decision for whatever action they choose to take, Athearn said. Once the federal executives make their decision, the action agencies will update their 2004 Implementation Plan; they will then send it to NOAA, which will develop a findings letter on that revised Implementation Plan, Ruff said. Once that is done, the Corps will develop its ROD. Ruff added that, before the actions outlined in the IP are implemented, the plan must also be submitted to Judge Redden for court review.

4. Overview of Proposed Hatchery Listing Policy and Proposed Listing Determinations for 27 ESUs.

Garth Griffin and Rob Jones provided a presentation titled “Overview of Proposed Hatchery Listing Policy and Proposed Listing Determinations for 27 ESUs.” Griffin explained that, 10 days ago, NOAA Fisheries announced the results of its ongoing hatchery policy and status review processes. It was a difficult process, he said; everything associated with hatcheries is controversial. He noted that more detail could be made available on this topic at a future IT meeting.

The presentation touched on the following major topic areas:

- 7Background – process grew out of the Hogan decision (*Alsea Valley Alliance v. Evans*) regarding Oregon Coast coho
- Overview of *Alsea Valley Alliance v. Evans*: set aside NOAA’s listing of Oregon Coast coho, was challenged; challenges were dismissed and the stay was dissolved. Two additional suits are pending regarding NOAA Fisheries’ steelhead listings in Southern California and the Central Valley for excluding within-ESA rainbow trout from listing
- Initiation of coastwide ESA status reviews – following the Hogan decision, NOAA Fisheries received ten additional petitions to delist or revise the status of various ESUs.
- ESA status review updates (map) – a total of 27 ESUs are under review
- The new hatchery listing policy – intended to revise the 1993 interim policy for the consideration of artificial propagation in its ESA listing determinations required revision following the *Alsea* ruling; as part of its response to the decision, NOAA Fisheries committed to revising this policy; that revised policy has now been proposed.
- The proposed policy reaffirms NOAA’s commitment to habitat protection and restoration. Its central tenet is to “...apply this policy in support of the conservation of

- naturally-spawning salmon and the ecosystems upon which they depend.”
- Implementation of the proposed hatchery listing policy – determination of “species” starts with the 1991 ESU policy; hatchery stocks and natural populations will be included in an ESU if they are 1) reproductively isolated from other stocks or populations and 2) representative of an important component of the evolutionary legacy of the species.
 - ESU status assessments – status determinations will be based upon the likelihood of extinction of an entire ESU, including natural populations, isolated hatchery stocks and mixed populations
 - ESU status assessments are based on abundance, productivity, spatial structure and diversity. In assessing the extinction risk of an ESU in total, the net contribution of within-ESU hatchery programs will be evaluated to determine if they modify the VSP risks currently limiting the ESU
 - For an ESU to be viable, it must include natural populations.
 - An overview of ESA protective regulations, including the fact that those protective regulations will not be applied to excess fish produced by hatchery programs for listed species.
 - The ESA status review process (flow chart)
 - Proposed listing determinations – the proposed listing determinations include four substantive changes to the current ESA listings on the west coast: Upper Columbia River steelhead (status proposed to be reduced from endangered to threatened), Sacramento River winter-run chinook (status proposed to be reduced from endangered to threatened), Central California Coast coho (status upgraded from threatened to endangered) and Lower Columbia River coho (status upgraded from candidate to threatened)
 - Proposed listing determinations – sockeye ESUs (map)
 - The number of hatchery populations included in the Northwest ESUs: 143 total (3 sockeye ESU hatchery programs, 80 chinook ESU hatchery programs, 33 coho ESU hatchery programs, 11 chum ESU hatchery populations, 35 steelhead ESU hatchery programs). Jones noted that the numbers of these programs are being re-evaluated, hence the disconnect between the total number cited earlier and the numbers in the by-species breakdown.
 - Proposed protective regulations for threatened ESUs of salmon and steelhead – NOAA Fisheries prohibits the take of threatened fish, except under certain circumstances, through a 4(d) rule. In the case of hatchery fish, NOAA Fisheries is proposing amending that rule so that take will be allowed if the fish’s adipose fin has been clipped. NOAA Fisheries is proposing to amend the rule so that take of rainbow trout is allowed. NOAA Fisheries is also proposing simplifying and clarifying changes to the protective regulations by applying the same 4(d) rule to all threatened ESUs.
 - The proposed simplifying amendments – a list of the species that will be brought under the 4(d) rule.

Griffin said the official draft of the revised policy is scheduled to be published in the Federal Register this Monday, June 14. So if a fish is not marked, it would be considered a wild fish? Liz Hamilton asked. For the purposes of management actions, if a fish is carrying an

adipose fin, the question is whether we have teased that out in terms of the regulation itself, Griffin noted. The answer is, no, we have not. The bottom line is that, for hatchery and harvest management plans, the group takes a look at all of the available information about a particular species and determines whether or not an action is allowed.

Again, said Griffin, more information will be forthcoming on this topic; there will be a 90-day comment period on these proposed changes, and we expect that a lot of comments will be received. He said NOAA anticipates a series of public presentations and workshops in support of this process.

In response to a question, Jones went through some of the rationale underlying some of the specific hatchery listings. He noted that, in terms of net effect, only 35 hatchery programs were included in the ESU in October 2001; under these proposals, 143 would be protected. And the old listings are still in effect, until these proposed changes are approved? Wills asked. That's correct, Jones replied.

What are the implications of these changes for hatchery production levels? Suzanne Cooper asked. I don't think there are any, Jones replied; at Spring creek, for example, there have been talks for some time about altering production levels. We look at programs on a case-by-case basis, in terms of their goals and purpose, and that won't change, he said.

How soon will the decision be made? Denny Rohr asked. Within one year from this Monday, when the proposed policy is published, Griffin replied.

5. Update on Northwest Power and Conservation Council's Consideration of Co-Sponsorship and/or Engagement In the Regional Forum.

Palensky said that, at yesterday's Council meeting in Boise, the Council chose to defer discussion of this topic until the group's July meeting. It was agreed to revisit this topic at the IT's August meeting.

6. Update on BiOp Remand Schedule.

Ruff said Judge Redden has granted NOAA Fisheries a time extension to complete the revised BiOp until November 30. We have backed up the schedule from that end-point to see when we need to produce a draft. We expect that draft to be available for a 30-day regional review period by the end of August. Will you be asking for public comments at that time? Jim Athearn asked. We're primarily interested in comments from the state and tribal sovereigns, Ruff replied. So other parties who want their comments heard should provide them to the states and tribes? Athearn asked. Correct, Ruff replied. In response to a question from Heinith, Ruff said what is being produced through this process is a new proposed action, focused on the specific items that need to be changed. It's a tight schedule, obviously, Ruff added.

7. Next IT Meeting Date.

The next Implementation Team meeting was set for Thursday, August 5. Meeting summary prepared by Jeff Kuechle, BPA contractor. (Meeting went to 2)